ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The majority of commenters agree that CPP, if properly implemented, will enhance local competition between landline and wireless telephony carriers and offer consumers additional mobile communications options. This increase in competition between wireless and wireline carriers cannot be realized, however, until the Commission addresses and resolves the substantial obstacles to the implementation of a CPP regime that is viable for *all* CMRS carriers as well as consumers.

First, the Commission must differentiate pay per call services from CPP. The potential for abuse of consumers in pay per call settings simply does not exist in the CPP environment and thus the degree of consumer protection necessary also differs. Because of the relationship between the landline caller and wireless CPP subscriber, the fear of pay per call type abuses, *i.e,* unduly high rates for calls, or deceptive practices, are alleviated. Indeed, in most if not all cases, the wireless subscriber has a personal or business relationship with the person calling and has purposefully given the caller his or her wireless telephone number. This connection between the CPP wireless subscriber and the calling party removes the risk of excessive CPP rates or the risk of fraud on the part of the wireless carrier.

Second, while it is essential to educate consumers that charges will apply for completion of CPP calls, any notification mechanism should be national, simple and uniform. Most importantly, and as many commenters demonstrated, the CPP notification should not mandate inclusion of real-time exact charges associated with each CPP call. Real-time rate notification, if it is even feasible, imposes significant burdens that many, if not all, wireless carriers will be unable to overcome. In addition, it would be highly unusual for the FCC to require such

burdensome regulation on CMRS carriers in the absence of any actual deceptive practices by CMRS providers.

Moreover, as many commenters recognized, ILEC billing and collection services are essential to widespread CMRS carrier implementation of CPP. Despite ILEC contentions that CMRS carriers can and should bill CPP callers directly, no commenter was able to offer a credible explanation of how CPP could become an economically viable service offering for *all* CMRS carriers without access to the ILEC billing and collection at reasonable rates. The ILECs' unparalleled scale, scope and market power for billing and collection, specifically at the stage of bill fulfillment, is unchallenged in today's telecommunications marketplace. Without a requirement that the ILECs provide these services to wireless carriers offering CPP, wireless carriers unaffiliated with ILECs will not offer CPP as a service option. An ILEC billing and collection requirement is consistent with Commission precedent as well as the Commission's Title I jurisdiction over billing and collection. Further, ILEC billing and collection is a network element that meets the criteria for unbundling.

Finally, contrary to the ILECs' suggestions, international experiences with CPP should not be overlooked by the Commission. International CPP models demonstrate that CPP enhances the ability of wireless subscribers to use wireless telephony much as they do wireline services, resulting in increased demand for CMRS services and enhanced competition in the provision of a range of telecommunications services. Although there are structural, regulatory and other differences between the U.S. and foreign telecommunications markets, there are nonetheless valuable CPP lessons to be learned. One reason, perhaps, for ILECs to attack the international model for CPP is that it is predicated upon cooperative arrangements between the ILEC and the CMRS provider with the ILEC billing the calling party for its CPP call. In any

event, ignoring the successful experiences of other countries in implementing CPP would be extremely shortsighted and contrary to the public interest.

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The Personal Communications Industry Association ("PCIA") hereby submits its reply comments on the notice of proposed rulemaking proposing to implement calling party pays ("CPP") in the United States.[1] The comments filed on the Commission's calling party pays *Notice* reflect significant interest in CPP but acknowledge there are hurdles to its successful implementation in the United States. PCIA focuses these reply comments on the most significant issues the Commission must resolve.

I. INTRODUCTION

PCIA, like the majority of commenters, believes that CPP, if properly implemented, will enhance competition between landline and wireless telephony carriers in the local markets as well as provide additional mobile communications options to consumers. For the success of CPP to be realized, however, several impediments to the viability of the service offering must be removed by the Commission.

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[1] Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999) ("*Notice*").

First, the Commission must adopt a uniform and simple notification mechanism, along the lines urged by the CMRS industry. While it is essential that consumers understand that usage-sensitive charges will apply for CPP calls, there are a variety of ways to educate and inform consumers about these charges. The comments reveal there are significant technical and practical problems associated with lengthy, detailed notifications messages that include real time rate quotes. Among the problems identified, complicated CPP messages will cause consumer frustration and will substantially increase the cost of the service. Similarly, a notification requirement that mandates the inclusion of real-time rate information will essentially destroy the viability of CPP because several carriers may be involved in handling a CPP call and their rates cannot easily be summed. Unlike the pay per call services environment, callers to CPP subscribers will be informed users and will not be charged exorbitant rates for the service, making real time, per-call price disclosures unnecessary.

Second, the Commission must ensure that all CMRS carriers have access to reasonably-priced ILEC billing and collection functions. Without a cost-effective means of receiving compensation for completed CPP calls, non-ILEC affiliated CMRS providers will be unable to offer a CPP service option that is priced at a level that will be readily accepted in the marketplace. Because it has been demonstrated that there are no viable alternatives to ILEC billing and collection, particularly at the stage of bill fulfillment, the FCC must adopt certain minimum requirements mandating that ILECs make their billing and collection services available for CPP at reasonable and nondiscriminatory rates.

PCIA also recommends that the FCC examine the underpinnings of the success of CPP in other countries. While PCIA recognizes there are differences in service penetration and pricing structure between the United States and other markets, there is no reason to totally disregard, as

certain ILECs suggest, the experience of CPP elsewhere. The likely reason, of course, for ILEC disparagement of the international CPP model is that in every case PCIA has examined, the fixed local carrier readily provides billing and collection for CPP calls at a reasonable, incrementally-based price.[2] This is no reason, however, for the Commission to ignore the CPP experience elsewhere.

II. ADDITIONAL CONSUMER PROTECTION CONCERNS DO NOT EXIST WITH CPP.

A. By-And-Large, Wireline Callers Will Have a Relationship with the Wireless CPP Customer.

Several commenters expressed heightened concern about consumer protection issues, *e.g.*, those that are typically associated with pay per call services, that they believe may be implicated by CPP.[3] As discussed more fully below, however, CPP is substantially different from "traditional" pay per call services and thus must be regarded differently. Although CPI asserts that CPP runs the same risk of consumer fraudulent abuse that occurred with "976" and "900" numbers,[4] the relationship between the landline caller and wireless CPP subscriber alleviates the concern of "pay per call" type abuses, *i.e,* unduly high rates for calls, or deceptive

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[2] It should also be noted that the current U.S. ILEC-CMRS interconnection regime is not the same as the CPP model proposed in the *Notice* or intercarrier interconnection arrangements abroad. ILECs should not be allowed to use CPP as an excuse to charge their customers any more to recoup the costs they may allege are associated with CMRS-ILEC interconnection.

[3] Several consumer groups and agencies filed comments addressing the consumer protection, including consumer notification and CPP rates. *See, e.g.*, Comments of the American Association of Retired Persons ("AARP Comments"); Comments of the Competition Policy Institute ("CPI Comments"); Comments of the Federal Trade Commission ("FTC Comments"); and Comments of the Global Wireless Consumers Alliance ("GWCA Comments").

[4] CPI Comments at 4-5.

carrier practices. In most if not all cases, the wireless subscriber has a personal or business-type of relationship with the person calling and has *purposefully* given the caller his or her wireless telephone number.[5] There is no reason to believe CPP subscribers will lack a personal or business relationship with their callers. This connection between the CPP wireless subscriber and the calling party substantially eliminates the risk of excessive CPP rates or the risk of fraud on the part of the wireless carrier. As with collect calling, for example, CMRS subscribers using CPP will not want their friends, family members or colleagues charged exorbitant rates for placing calls to them. Similarly, wireless providers have no motive to charge high rates for CPP service, as high rates would prevent CMRS subscribers from choosing CPP as their preferred service option.

The same is true for deceptive carrier practices. Wireless providers have no reason to conceal their identity or extract hidden charges from CPP callers because their wireless subscribers will not allow friends or business associates to be duped into paying hidden costs or unknowingly placing calls for which CPP charges will apply. Thus, analogies to 900 service pay per call regulations miss the mark. CPP is not some type of trap for the unwary. And callers to CPP customers are not in need of extraordinary warnings or additional consumer protections as a precondition of completing a call.

[5] Indeed, the *Notice* recognizes that wireless numbers are not typically published, nor do subscribers give out their numbers as readily as wireline telephone numbers.

B. A Simple, Unobtrusive and Uniform Notification Protects Consumers.

PCIA urges the Commission to adopt a simpler notification mechanism than the one proposed in the *Notice.*[6] While PCIA agrees with the comments stating that it is necessary to inform and educate consumers that charges will apply for completion of CPP calls, development of appropriate notification schemes cannot occur in a vacuum. There are technical and practical problems associated with the development and implementation of lengthy, detailed per call notification messages. Among other things, long complicated CPP messages will cause consumer frustration and will substantially erode the viability of the service. As one commenter suggested: "[a]s proposed, the notification for CPP calls would generate among consumers the same frustration that similar menu systems now generate for calls to retail and service companies and agencies."[7]

Specifically, any notification mechanism should not mandate inclusion of the exact charges associated with each CPP call in a per-call preamble. Commenters demonstrated that from a technical and economic standpoint, it is virtually *impossible* for CMRS providers to inform callers of the exact charges for a CPP call that is handled by several carriers. AirTouch stated, for example, that the inclusion of a per-minute rate and other charges associated with the

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[6] PCIA also opposes the even more complicated language that was proposed by the members of NARUC during a conference call with the Wireless Telecommunications Bureau. In addition to the Commission's four-part announcement, members of NARUC propose to include "whatever charges other than airtime that may be charged to the calling party by the wireless carrier . . . [along] with mention of where the caller would be billed, such as the caller's local telephone bill or credit card bill." *See Ex Parte* Letter filed by the Federal Communications Commission with NARUC Representatives, WT Docket No. 97-207, at 1-2 (filed September 19, 1999).

[7] *See* Omnipoint Comments at 4.

CPP call would create consumer confusion and excessive costs.[8] In addition, as observed by Sprint, "a government requirement that CPP providers list 'all charges' would limit severely the type of CPP service that the public will receive."[9] Indeed, it is important for carriers to have the flexibility to design the content and operation of CPP notices so they can cater to their own customers' expectations and needs. Moreover, "[r]equiring the inclusion of per-minute rate information would change the nature of wireless CPP calling eliminating its seamlessness by including a long, detailed message on each and every CPP call."[10]

Neither the law nor Commission precedent requires real time per call disclosure of the exact rates for each CPP call. To the extent that CPP rate information is incorporated into the notification mechanism to address excessive CPP charges by CMRS providers, the Commission has recognized that there is no evidence of excessive CPP pricing that might otherwise warrant a per call notification.[11] Significantly, even when the Commission has decided to require substantial notification requirements, *i.e.*, to rectify *past* abuses by carriers (for alternative operator services and pay per call services) it has not required real-time provision of rate information. It would be unprecedented for the FCC to require such burdensome and expensive regulation on CMRS carriers in the absence of any expected abuse of CPP or CPP callers.

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[8] AirTouch Comments at 45. *See also* Comments of the Cellular Telecommunications Industry Association at 22-28 ("CTIA Comments") (Requiring the message to contain rate information is potentially misleading and prohibitively expensive. Moreover, the disclosure of rate information is premature given the lack of evidence of fraudulent behavior on the part of CMRS carriers.).

[9] Sprint Comments at 5.

[10] Nextel Comments at 9-10.

[11] *See Notice* at ¶ 54.

PCIA provides the following analysis of the consumer notification requirements the Commission imposed on operator services and pay per call services. These examples illustrate why CPP is *not* a candidate for extensive per-call notification requirements.

1. Operator Services

In response to concerns about unscrupulous operator service provider ("OSP") practices, including proliferating consumer complaints over inaccurate disclosure of the identity of the presubscribed OSP and rate gouging, Congress enacted the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"). In implementing TOCSIA, the Commission promulgated regulations to protect consumers from deceptive practices relating to their use of operator services to place interstate telephone calls and to ensure that consumers have the opportunity to make informed choices in placing such calls.[12] Section 64.703 of the Commission's rules requires that, *inter alia*, each provider of operator services: (1) identify itself audibly to the consumer before any charges are incurred; permit the consumer to terminate the telephone call before charges are incurred; and (3) disclose *upon request* a quotation of its rates or charges for the call.[13] At no time has the Commission required OSPs to provide a live rate preamble to the user of operator services. The Commission has refused to mandate the up-front disclosure of precise charges for the use of operator services.

Given the obvious and well publicized rate gouging that prevailed in the alternative operator services market, it is not surprising that appropriate carrier identification and other

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[12] Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, *Second Report and Order*, CC Docket No. 94-158, FCC 99-171, at ¶ 3 (rel. July 19, 1999).

[13] *Id. See* 47 C.F.R. § 64.703.

disclosures would be required. What is surprising is that, in the case of CPP, the Commission is prepared to require unprecedented disclosures from CMRS carriers beyond those required of operator service providers without any evidence that CPP users will be abused. Unlike alternative operator services, CPP will be competitively priced with non-CPP CMRS service and the wireless carrier will be easily identified. As GTE noted in its comments, "up-front, 'on-the-line' rate information has typically been required only where it is specifically been shown that such information is necessary to protect consumers from fraud and misinformation."[14] Thus, not only is the Commission's basic reason for requiring per-call disclosures absent here, but the Commission has failed to articulate any reason whatsoever that disclosures over and above those required of operator service providers are essential, or even desirable, for CPP calls.

2. Pay Per Call Services

Similar to the steps taken to protect consumers from abuses associated with operator services, Congress in 1992 enacted the Telephone Disclosure and Dispute Resolution Act ("TDDRA"), which added Section 228 to the Communications Act ("Act"). Section 228 required the Commission and the Federal Trade Commission ("FTC") to adopt rules both to promote the legitimate development of pay per call services while at the same time shielding telephone subscribers from deceptive practices. Due to continuing consumer dissatisfaction with some aspects of pay per call services, such as unfettered and uncontrollable access to unwanted information services and unexpected charges for the services,[15] Congress amended Section 228 in 1996 to provide additional consumer protections.

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[14] GTE Comments at 18.

[15] *See* Policies and Rules Governing Interstate Pay-Per-Call and other Information Services Pursuant to the Telecommunications Act of 1996, and Policies and Rules Implementing the

continued...

Under TDDRA, both the FCC and the FTC are required to adopt separate but complementary rules to protect telephone subscribers from fraudulent and abusive practices from both carriers and non-carriers. Generally, under the Commission's rules, common carriers involved in either transmitting and/or billing subscribers for pay per call services are subject to several requirements intended to ensure that consumers are able to prevent access to or charges for unwanted information services.[16] In conjunction with the Commission's requirements, the FTC requires carriers to include a preamble message which discloses the flat rated services and per minute rates that will apply to each call. The FTC does *not* require real-time exact quotes of rate totals prior to a consumer's decision to complete a call.[17] Thus, no such rate requirement should be required for CPP.

Telephone Disclosure and Dispute Resolution Act, *Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 14738, 14740-41 (1996). In response to complaints from consumers, businesses and organizations that they had been billed for calls made from their phones to toll-free numbers, the TDDRA also mandated explicit restrictions on the use of 800 and other toll-free numbers to provide information services. *See* Telephone Publishing Corporation and Telemedia Network, Inc. d/b/a International Telnet, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 24385, 24386 (1997).

[16] Ronald J. Marlowe, Esq., *Response to Informal Request*, 11 FCC Rcd 10945 (1995) (noting that pay per call services are to be provided over the 900 access code).

[17] The FTC's pay-per-call preamble requires among other things that each pay-per-call message include: (1) the identity of the provider and a description of the service being provided; (2) the cost of the service as follows: (i) If there is a flat fee for the call, the preamble shall state the total cost of the call; (ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program; (iii) If the call is billed on a variable rate basis, the preamble shall state, the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller; (iv) Any other fees that will be charged. *See* 16 C.F.R. § 308.5(a).

While the Federal Trade Commission ("FTC") suggests that pay per call services and "non-interconnection" CPP share many similarities,[18] the FTC fails to recognize the direct relationship that the CMRS subscriber has with the calling party, which is absent in the typical pay per call situation. According to the FTC, in both pay per call services and non-interconnection based CPP offerings, the call recipient has complete control over the cost of the call, and thus has the incentive to conceal the actual cost of the call and charge exorbitant rates.[19] With CPP, however, the CMRS subscriber has every incentive to avoid aggravating the calling party. People the CMRS subscriber wants to hear from will not call them if the CMRS carrier charges unreasonably high rates or engages in deceptive practices. Should some unscrupulous CMRS carrier chose to employ fraudulent methods, the CMRS subscribers will simply not purchase CPP or move to another CMRS carrier whose CPP offerings they prefer.[20]

CPP is different from traditional pay per call and operator services. There is no serious prospect of fraud or deceptive practices with CPP because of the existing relationship between most callers and wireless CPP subscribers. In most cases, the wireless CPP subscriber knows the person calling and has given the caller his or her wireless number. It would be unprecedented and overly regulatory for the FCC to require detailed, real-time rate information in the absence of any evidence of abuse or consumer complaints regarding CPP. CMRS

[18] Even the FTC, however, does not go so far as to suggest that TDDRA applies directly to CPP.

[19] FTC Comments at 21.

[20] The FTC also suggests that abuse of CPP may occur if CMRS carriers began structuring CPP calling plans in a manner that provides material benefit to the CPP subscriber based on the number or duration or incoming calls. FTC Comments at 23. Again, however, the CMRS subscriber has no incentive to benefit to the detriment of the calling party. Because CMRS subscribers have no incentive to gain from CPP, the CMRS provider has no incentive to structure CPP plans that achieve this result.

industry commenters demonstrated that there are real costs associated with substantial per call preamble requirement that inevitably will impact the rates charged for CPP calls. The Commission's action on per call notification must be made with the knowledge that burdensome requirements may require CMRS carriers to charge rates beyond those consumers will accept and thus doom the viability of the service.[21]

III. THERE ARE NO VIABLE ALTERNATIVES TO ILEC BILLING AND COLLECTION FOR CPP.

The comments filed reflect a broad range of views on the need for billing and collection of CPP charges by ILECs. Despite all the assertions — primarily by the ILECs — that CMRS carriers are capable of rendering their own bills, no commenter was able to offer a credible explanation of how CPP could become an economically viable service offering without access to the ILEC billing and collection at reasonable rates. PCIA's demonstration of the unmatched power of the ILECs, as well as their scale and scope and market power at the stage of bill fulfillment is entirely unchallenged.

A. The ILECs Assert their Willingness to Provide Only BNA and Falsely Claim That Withholding Other Billing and Collection Functions Will Not Affect The Viability Of CPP.

ILEC commenters uniformly argue that they should not be required to provide access to their billing and collection functions by CPP service providers because the market for CPP billing and collection is competitive due to a variety of existing alternatives to ILEC-provided

[21] As the Strategis Report reflects, internationally, CPP subscribers have no real-time notification provided. *See* Strategis Report at 7.

services.[22] Several ILECs assert that because they generally provide billing name and address ("BNA") information under tariff, CMRS providers have everything they need to bill and collect for CPP service. These assertions are not only disingenuous, they ignore the economic realities of the marketplace.

As explained in PCIA's comments and the DETECON White Paper attached thereto, billing and collection is not just one function, but rather a series of several discreet but inter-related functions. It is true that CMRS providers may be successful in finding viable options in handling the first few steps of the process, up to and including the invoice creation stage. Beyond this point (*i.e.*, starting with the printing and mailing of the bill), however, there is no economically feasible alternative to ILEC-provided services priced on an incremental cost basis. As many commenters demonstrated, because CPP billed on a per-call basis will result in small invoice amounts, it can only be viable with access to ubiquitous low-cost billing and collection functions.[23] The local exchange carrier has a monopoly on reliable and efficient monthly billing access to wireline subscribers.[24] Because of the ubiquity of their services, ILECs are able to recognize efficiencies of scale far beyond any that could be achieved by a non-ILEC affiliated billing clearinghouse. Indeed, the clearinghouses themselves recognize that they cannot provide

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[22] *See, e.g.,* Bell Atlantic Comments at 6; BellSouth Comments at 17; U S West Comments at 19-21; SBC Communications Comments at 8; GTE Comments at 33; Cincinnati Bell Telephone Comments at 10.

[23] *See, e.g.,* Coalition to Ensure Responsible Billing ("CERB") Comments at 4 ("Direct billing of CPP charges is not a viable option because the cost of a CPP call will often be less than the cost of preparation and postage for a direct bill.")

[24] For example, one-third of American families — particularly those with low incomes — do not have general purpose credit cards, *see* CERB Comments at 5, and many renters may not receive other utility bills. Determining which billing "route" to use for each individual caller would increase transaction costs and erode any economies of scale that otherwise could be achieved.

an economically viable alternative to LEC billing and collection for CPP.[25] Moreover, none of the technological "solutions" referenced by BellSouth provides an alternative to creating and mailing a separate bill.[26] Nortel Networks explains, in fact, that even its proposed CPP billing products will still require significant involvement by local exchange carriers to make CPP billing and collection feasible.[27]

In asserting the ready availability of competitive billing and collection services, ILEC commenters fail to address the relevant market. Relying on the circumstances confronting IXCs and information service providers is inapposite in the CPP context.[28] A service can hardly be considered "competitive" if it is priced so high that members of the relevant market of potential customers — in this case, CPP providers — do not purchase the service because it is uneconomic. Moreover, the assertion that other billing and collection alternatives exist is indicative of the ILECs' "let them eat cake" attitude. Further, it is analogous to suggesting that there was no need to require CLEC access to the ILECs' unbundled network elements ("UNEs") because the CLECs always had the "alternative" of building their own networks from scratch.

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[25] *See* CERB Comments at 3 ("Aside from the local bill, there is no nationally ubiquitous, reliable, economically feasible billing platform for CMRS providers to bill CPP calls."); Pilgrim Telephone Comments at 23 ("LEC billing systems . . . represent the only practical means currently available by which CPP providers can efficiently bill and collect for their services.").

[26] *See* BellSouth Comments at 14-16. BellSouth states that technology-based products can create call detail records for downloading "to a billing platform for processing and collection by the appropriate wireless carrier or clearinghouse," but conspicuously fails to address the most important issue — how the "processing and collection" is to be accomplished. *Id.* at 16.

[27] *See* Nortel Networks Comments at 7.

[28] *See* discussion in Section III.B, *infra*.

Like the local loop, ILEC billing and collection service for CPP is a feature that, at present, cannot be replicated by competitors at an economically viable cost.[29]

In support of its assertion that Commission intervention is not needed to ensure CPP availability, Cincinnati Bell cites to the fact that it already provides billing and collection services for CPP charges.[30] Ameritech and U S West also currently provide CPP billing services for AirTouch.[31] To the extent that ILECs already provide CPP billing and collection, a rule that simply requires them to continue providing such services hardly could be considered overly burdensome.

Unfortunately, however, not all ILECs are willing to offer billing and collection services voluntarily. While opposing any new FCC requirements, GTE nevertheless admits that it has "observed hesitation on the part of some LECS to offer billing and collection" for CPP.[32] Some carriers, such as SBC, have flatly refused to implement any form of CPP billing.[33] SBC's refusal to bill for CPP is particularly significant because, now that its merger with Ameritech has been finalized, SBC controls over 57 million access lines in 13 states, representing one-third of the

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[29] Consequently, LEC refusal to bill for CPP calls constrains competition in the billing and collection industry in addition to the communications industry. Clearinghouses recognize that they cannot provide economically-priced services for potential CPP-provider customers without access to the LEC bill. *See* CERB Comments at 4 ("LECs . . . offset the cost of billing and collections — everything from postage costs to software — through revenue gained from local service and third-party [billing] contracts . . . .").

[30] *See* Cincinnati Bell Comments at 2.

[31] *See* AirTouch Comments, attached Declaration of Dr. Michael L. Katz and David W. Majerus at 8.

[32] GTE Comments at 34.

[33] *See* AirTouch Comments at 20; CERB Comments at 6.

nation's total telephone lines.[34] Wireless customers are unlikely to elect CPP if one out of three potential callers cannot utilize CPP to reach them due to the lack of a cost-effective billing mechanism. Earlier in this proceeding, Omnipoint stated that its proposed CPP service was denied access to ILEC bills by Alltel and even by Cincinnati Bell which, as noted above, ironically touts its record of providing CPP billing and collection services.[35]

In addition to evidence regarding ILEC refusal to bill and collect for CPP calls, the record also demonstrates that ILECs are becoming less willing to bill for other services as well. Because clearinghouses are uniquely positioned to observe trends in the billing and collection industry, their comments are particularly insightful.[36] As CERB members have experienced, most RBOCs have instituted moratoriums on new third-party billing and/or have imposed near-zero complaint thresholds on competitors, but not on their own affiliated services.[37] Nevadacom, which relies heavily on clearinghouse/LEC billing arrangements throughout the country, also observed that:

> Within the last two years, in response to the growing number of cramming complaints, LECs have begun terminating or modifying their B&C agreements with billing clearinghouses. In some cases, however, the LEC simply refuses to bill for a particular service or type of call record even if the LEC has not received complaints regarding a particular service provider.[38]

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[34] *See* SBC Communications, Inc., *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, Mar. 15, 1999 at 4; Ameritech Corp., *Annual Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934,* Mar. 31, 1999 at 4 (reporting access line data).

[35] *See* Comments of Omnipoint Communications, Calling Party Pays Service Option, WT Docket No 97-207, CTIA Petition for Expedited Consideration, DA 98-468 at 4 (May 8, 1998).

[36] CERB is made up of seven clearinghouses that have established billing and collection contracts with most ILECs.

[37] *See* CERB Comments at 7-8 (citing specific examples of anticompetitive behavior by ILECs).

[38] *See* Nevadacom Comments at 3.

Similarly, the National Telephone Cooperative Association ("NTCA") states that its members "are moving away from" billing and collection arrangements with long distance providers.[39]

Fundamentally this is a competitive issue. As SBC stated frankly in a letter to AirTouch, "our ability to market additional products and services would be negatively impacted if we were to bill CPP on Pacific Bell's telephone bill."[40] Simply put, ILECs have an economic incentive not to bill for CPP services of non-affiliated carriers because: (1) CPP will enhance the ability of CMRS providers to compete against the ILECs' core wireline services; and/or (2) non-affiliated CMRS carriers compete directly against ILEC-affiliated wireless companies for subscribers. The United States Telephone Association ("USTA") even admits, by citing a report on the billing and collection industry, that "billing and customer care remains an important competitive tool in the telephony services war."[41] U S West observes that "[i]ncreasingly, LECs are going to want to differentiate themselves from other providers who will be their competitors. And the billing that the LECs do for themselves will – increasingly – be bundled into packages that include a range of telecommunications and non-telecommunications offerings."[42] As CERB states, "if ILECs are successful in driving competitive services off their bills, consumers who wish to pay for all of their telecommunications services on a single bill will be forced to use only ILEC provided services."[43] The ILEC smokescreen on fostering marketplace competition by maintaining

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[39] NTCA Comments at 6.

[40] *See* Airtouch NOI Comments at Appendix B (letter from David Kerr, Southwestern Bell Corp., to Scott Falconer, AirTouch Cellular, Nov. 19, 1997).

[41] USTA Comments at 7.

[42] U S West Comments at 22.

[43] CERB Comments at 8.

"deregulation" is motivated by ILEC interest in capturing more markets and is highly disingenuous.

B. Requiring LEC Billing and Collection Is Consistent with Precedent.

ILEC comments also assert falsely that the Commission would be reversing itself in mandating cooperation by ILECs in billing and collection for CPP calls. The Commission, however, consistently has stated that it maintains Title I jurisdiction over billing and collection.[44] Thus, any action it takes to ensure access to billing services for CPP would not constitute "re-regulation" of billing and collection.[45] The Commission's previous decisions not to impose specific requirements relating to ILEC billing and collection services have been based on the facts of the particular market circumstances for the service provider seeking the billing requirement. Rather than relying on outdated and inapposite comparisons to other types of services as some commenters urge, the Commission should make a fresh determination based on facts in the current record that are specifically relevant to the market dynamics of billing and collection for CPP calls.

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[44] *See* Detariffing of Billing and Collection Service, *Report and Order*, 102 FCC 2d 1150, 1169 (1986) (holding that the Commission has Title I, but not Title II, jurisdiction over billing and collection services) ("*Detariffing Order*"); Filing and Review of Open Network Architecture Plans, *Memorandum Opinion and Order*, 4 FCC Rcd 1, 59 (1988) ("our Title I authority over the BOCs' billing and collection activities is clear, since such activities are incidental to communications"); Audio Communications, Inc. Petition for Declaratory Ruling, *Memorandum Opinion and Order*, 8 FCC Rcd 8697, 8702 (1993) ("*Audio Communications Order*").

[45] The Commission, in fact, previously has exercised its Title I authority over billing and collection services to preempt state rate regulation of billing and collection for IXCs. *See* Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, *Memorandum Opinion and Order*, 4 FCC Rcd 4000, 4005 (1989), *aff'd, Public Service Comm. of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990).

As many commenters observed, CPP service in 1999 presents a different set of circumstances than interexchange service in 1986, when the Commission issued its *Detariffing Order* and declined to require ILEC billing and collection for IXC services.[46] Unlike IXCs thirteen years ago, for example, CMRS providers today are competitors or potential competitors of the ILECs, creating an economic incentive for the LECs to keep CPP calls off their bills. IXCs also have pre-established relationships with wireline subscribers, meaning that collections are less difficult than for bills issued for casual calling basis charges like CPP where the caller may have no pre-existing relationship with the service provider. A pre-established customer relationship also means that the provider will not have to pay for BNA information, thus reducing its overall billing cost. Moreover, IXC bills typically bring in more revenue than a CPP bill would, thus enabling the IXC to afford higher fixed billing costs per subscriber. The trend toward minimum monthly long distance charges shows, however, that even IXCs have recognized the economic necessity of recouping their recurring monthly billing costs.[47] Finally, whether due to cramming concerns or anti-competitive motivations, ILECs are becoming less

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[46] *Detariffing Order*, 102 FCC 2d 1150. Even in light of the Commission's decision, most interexchange carriers maintain billing and collection agreements with the ILECs, reflecting both the consumers' preference for a single bill and the difficulty of achieving sufficient economies of scale and scope to make direct billing economically viable.

[47] AT&T, for example, recently justified its minimum monthly usage requirement by stating that the "costs of billing customers and of maintaining customer account and billing systems is a significant cost incurred by AT&T that varies with the number of presubscribed customers, but varies little with usage. . . . AT&T has estimated that its billing and other fixed costs exceed $3.00 per customer, per month even when billing is done on a less frequent than monthly basis." Comments of AT&T Corp., Low-Volume Long-Distance Users *Notice of Inquiry*, CC Docket No. 99-249 (filed Sept. 22, 1999) at 25. *See also* Comments of Sprint Corporation, Low-Volume Long-Distance Users *Notice of Inquiry*, CC Docket No. 99-249, at 3 (filed Sept. 22, 1999) (citing costs of monthly billing services and customer care to justify its flat charges assessed on customers).

willing to provide billing services to any non-affiliated carriers or to the clearinghouses they repeatedly hold up to the FCC as the alternative to ILEC-provided billing and collection functions. When the lowest-cost provider of a service begins withdrawing the availability of that service, the competitiveness of that market will surely suffer.[48] For all of these reasons, the Commission's findings in the *Detariffing Order* bear little relevance to the billing and collection issues confronting CMRS providers who wish to offer CPP services.

In addition to the *Detariffing Order*, several commenters overstate the relevance of the Common Carrier Bureau's 1993 *Audio Communications Order* regarding billing for 900 information services to a Commission billing mandate for CPP.[49] As an initial matter, this *Order* was issued by the acting chief of the Bureau and consequently does not establish full Commission precedent. Furthermore, the question of ILEC billing was not directly before the Bureau because the company's petition specifically sought access to IXC billing and collection services.[50]

In any event, ILEC billing for CPP can be distinguished on a number of grounds from billing for 900 services. The Bureau found reasonable, for example, Sprint's refusal to bill for 900 service based on the large number of consumer complaints regarding the poor quality of

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[48] Moreover, the United States Telephone Association ("USTA") cites a recent report on the billing and collection industry stating that billing and collection "pricing is robust, with most companies raising, rather than lowering prices." USTA Comments at 7.

[49] *See generally Audio Communications Order*, 8 FCC Rcd 8697.

[50] Although the Bureau recognized that the petition's "primary demand appears to be for access to IXCs due to the IXCs' ability to secure access to LEC billing and collection services," the Bureau reasoned that information providers could use a clearinghouse or other non-IXC entity to access the economies of scale available through LEC billing. Moreover, the Bureau's finding regarding market competitiveness applied only to "billing and collection services provided by IXCs for IPs." *Id.* at 8700.

programming and unreasonably expensive rates. There is no record of this type of consumer objections in the CPP context and it is not likely that there will be. As discussed previously, CPP service presents less potential for abuse because of the existing relationship between the caller and the wireless CPP subscriber. The wireless CPP subscriber likely will know most of callers to the subscriber's mobile phone because the wireless customer will have purposefully given his or her number to chosen callers and will not chose a CPP plan that would result in "price gouging" of these callers.

CPP also differs from 900 services in some of the same way it differs from IXC services. Information providers do not threaten the core wireline business of the LECs, or their affiliated wireless operations. Also, because of the higher per transaction revenue generated by 900 services, such services are still viable in spite of the higher costs associated with non-LEC billing. Finally, 900 services are not telecommunications services. Because CPP is a telecommunications service provided by telecommunications carriers, the Commission must weigh statutory objectives when considering rules that could retard or enable the widespread adoption of CPP. Specifically, the Act gives the Commission the responsibility of promoting new communications services and promoting the efficient use of spectrum.[51] Both of these objectives can be furthered by the successful implementation of CPP.

Just as the use of the Commission's ancillary jurisdiction in the CPP billing context would be consistent with Commission precedent, such use also would be consistent with Section 332. In arguing the contrary, BellSouth relies solely on legislative history and language specifically identified by the Commission as *dicta* to argue that regulation of billing and

[51] *See* 47 U.S.C. §§ 151, 303(g), 309(j)(3)(D).

collection for CPP is within the exclusive jurisdiction of the states.[52] The plain language of Section 332(c)(3), however, does not support such a reading. This section neither prohibits FCC regulations relating to "other terms or conditions" pertaining to CMRS service, nor assigns exclusive jurisdiction for this field to the states.[53]

C. Access to BNA Should Be Required, But Is Not Enough.

Some of the ILEC commenters spend considerable energy asserting both that: (1) CPP providers have multiple billing options because they can obtain BNA from the ILECs; and (2) ILECs should not be required to provide BNA as an unbundled network element.[54] Once again, by focusing on an issue related to only a single part of the multi-stage billing process, these commenters attempt to distract the Commission from the more vital components of billing and collection — bill fullfillment. As discussed above, access to BNA, while necessary, is alone insufficient to overcome the barrier to CPP implementation because it does not solve the "separate envelope" problem. As AirTouch succinctly explains, separate billing is prohibitively uneconomic because: (1) "the costs of billing are too high relative to the small amounts of revenue each bill represents;" and (2) "the small amount of the bill encourages consumers to not pay CPP bills and thus, uncollectibles are high."[55]

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[52] *See* BellSouth Comments at 6-9.

[53] Moreover, neither would Section 2(b), which reserves jurisdiction over most intrastate services to the states, present a bar to Commission action relating to LEC billing services. A federal appeals court and the Commission have both interpreted Section 2(b) to apply only to common carrier services, which, according to the Commission, billing and collection is not. *See* Pilgrim Telephone Comments at 37.

[54] *See, e.g.,* Cincinnati Bell Comments at 6-8; Bell Atlantic Comments at 7-8.

[55] AirTouch Comments at 14. Moreover, AirTouch observes that the cost of obtaining BNA alone can be prohibitive for low revenue CPP calls, as many LECs charge per-query rates of $0.20 or more. Pacific Bell, for example, charges up to $0.80. *Id.* at 15. MCI WorldCom

continued...

Nevertheless, access to BNA by CPP providers should be required to avoid an ILEC monopoly on performing the early stages of the billing process. The Commission should extend the applicability of its *Joint Use Calling Cards Order* and require LECs to provide BNA for purposes of billing for CPP.[56] In this Order, the Commission held BNA access to be a common carrier service and observed that "BNA is generated exclusively by LECs as a byproduct of their provision of exchange access service, and only LECs have the capacity to keep this information current."[57] There is no reason to distinguish between joint use calling card charges and CPP charges in determining access to BNA.[58]

D. BNA and Billing and Collection Are Network Elements Subject to Unbundling by the ILECs.

Although several ILEC commenters assert that BNA by definition cannot be a network element, they fail to provide any reasonable explanation for this assertion.[59] Cincinnati Bell, for example, illogically argues that because CMRS providers do not purchase any "facilities or equipment" in the provision CPP, they are not entitled to "information sufficient for billing" as

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recently stated in another proceeding that "ILEC LIDB and database query charges are currently many times their economic cost . . . ." Comments of MCI WorldCom, Inc., Low-Volume Long-Distance Users *Notice of Inquiry*, CC Docket No. 99-249, at 21 (filed Sept. 22, 1999).

[56] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, *Second Report and Order*, 8 FCC Rcd 4478, 4480 (1993)

[57] *Id.* at 4481.

[58] The Commission previously determined that enhanced service providers should have access to BNA. *See* Filing and Review of Open Network Architecture Plans, *Memorandum Opinion and Order*, 5 FCC Rcd 3103, 3107 (1990) ("This Commission is committed to ensuring that the BOCs provide [enhanced service providers] with the underlying information necessary or useful for the performance of billing and collection functions."). There is no reason to think that ILECs are free to refuse to provide BNA to carriers, much less information service providers.

[59] *See* Bell Atlantic Comments at 7; GTE Comments at 36-37; USTA Comments at 3; Cincinnati Bell Comments at 8-9.

an unbundled network element.[60] This circular logic implies that a carrier would first have to purchase one network element in order to be able to purchase a second one, which by definition constitutes bundling — exactly what Section 251 seeks to avoid.

Given the Supreme Court's extremely broad construction of the Act's network element definition,[61] the Commission could reasonably conclude that ILEC billing and collection is a network element in addition to BNA. Section 3(29) of the Act defines network element to include "features, functions and capabilities that are provided by means of such facility or equipment" that is "used in the provision of a telecommunications service." [62] ILEC-provided billing and collection services unquestionably constitute "functions or capabilities." Some of these functions rely on the same "facilities or equipment," such a Operational Support Systems ("OSS") used in the provision of the ILEC's telecommunications services.[63] The Commission already has determined, in fact, that "billing and collection is . . . properly considered a communications service."[64] After determining that billing and collection is a network element, the Commission should have no trouble finding that it satisfies either the "necessary" or "impair" standards that would subject it to Section 251 unbundling requirements, because CPP is not economically viable for non-ILEC affiliated CMRS providers without access to such services.

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[60] Cincinnati Bell Comments at 9 (stating that information sufficient for billing and collection "does not stand alone as a 'network element'").

[61] *See AT&T v. Iowa Util. Bd.*, 119 S. Ct. 721, 733-34 (1999).

[62] 47 U.S.C. § 153(29).

[63] *See AT&T v. Iowa Util. Bd.*, 119 S. Ct. at 733-34 (concluding that OSS, which is used, *inter alia*, in the management of billing functions, is a network element).

[64] LEC Validation and Billing Information for Joint Use Cards, *Second Report and Order*, 7 FCC Rcd 3528, 3533 (1992).

Some commenters argue that requiring the unbundling of ILEC billing and collection would be useless in enabling CPP because many calls would originate from subscribers of CLECs, IXCs and CMRS providers not subject to the Act's unbundling provisions.[65] While the ability to access the billing services of these carriers is important, obtaining ILEC billing and collection is the critical first step in "jump-starting" CPP. Because most CPP calls, like most calls to wireless subscribers, likely will be made from local area wireline phones, and because ILECs still maintain a massive portion of the local exchange market share, only access to ILEC billing and collection services can provide the critical mass needed to make CPP offerings viable.

IV. THE INTERNATIONAL EXPERIENCE WITH CCP CANNOT BE DISREGARDED.

Several ILECs and users hostile to CPP implementation in the U.S. suggest that the international experience with CPP may have little bearing on the demand for CPP in the United States because market conditions are so different.[66] Interestingly, these commenters fail to provide any support for their bald assertions.

According to SBC, for instance, the U.S. wireless penetration rate is comparable to or exceeds that of many countries with CPP.[67] What SBC fails to consider, however, is that penetration of wireless service in the U.S. is not equal to that of landline service. Thus,

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[65] *See* Cincinnati Bell Comments at 10; BellSouth Comments at 3.

[66] SBC Study at 1-2; *see also* PUCO Comments at 5-6 (suggesting that other nations' experiences with CPP are irrelevant); Comments of the Ad Hoc Telecommunications Users Committee at 23 (claiming that the fundamental differences between wireless systems in the U.S. and abroad make it impossible to apply international experience to the introduction of CPP in the U.S.).

[67] SBC Study at 15-20.

implementation of a service option in the U.S. that has successfully increased wireless penetration in other countries should not be summarily disregard on the basis SBC asserts. Indeed, it is preposterous to suggest that an entire world of experience with the CPP service option should be completely discredited by the Commission. While obviously there are differences in service penetration and pricing structures among countries, that is no reason to totally disregard the CPP experience elsewhere. Such unsupported assertions by the ILECs merely demonstrate that they do not wish the Commission to scrutinize or adopt a uniform aspect of CPP as it is implemented elsewhere — ILEC billing and collection for CPP calls.

As demonstrated by the Strategis Report attached to PCIA's comments, the international experience shows that CPP enhances the ability of wireless subscribers to use wireless telephony much as they would wireline services, resulting in increased demand for CMRS services and enhanced competition in telecommunications services. As the Report indicated: "[s]ubscribers, usage and ARPU [average revenue per user] tend to increase following the implementation of Calling Party Pays."[68] Moreover, according to one commenter:

> The international experience with the accessibility to telecommunications services through CPP is positive. For example, CPP has opened up telecommunications service to populations in Latin America who never had a choice or chance to use landline service. In Columbia, CPP service options assist : "'those in the lower socioeconomic tiers of the population because it's cheaper and allows for cost control.'" Customers in Columbia can receive an unlimited number of phone calls for a low monthly price; "'[e]mployers can communicate with out-of-the-office staff, farmers with their workers in the field, and parent with their children, without worrying about high phone bills.'" CPP has the ability to empower consumers.[69]

[68] *See* Strategis Report at 1.1

[69] CTIA Comments at 5.

In examining international CPP models, PCIA is mindful that structural, regulatory and other differences between the U.S. and foreign telecommunications markets exist that may affect analysis of the CPP service option in the United States. Nevertheless, PCIA along with numerous other commenters believe that there are valuable lessons to be learned from the international CPP experience. Perhaps most importantly, none of the countries that Strategis examined retains any significant per-call preamble or notification requirements. Rather, the extent of consumer "notification" is nothing more a dedicated wireless area code to reach the mobile subscriber.[70] With regard to billing and collection, CPP has been implemented worldwide by a billing and collection arrangement with the ILEC. In none of the countries surveyed are CMRS carriers required to bill the calling party. Sprint, for example, believes that this international model involving LEC/CMRS negotiations to set intercarrier compensation has merit. PCIA agrees that the FCC should carefully consider such arrangements.[71]

These international experiences must be taken into account. They offer a good indication of the benefits associated with CPP implementation and the regulatory issues that must be examined and resolved before proper implementation can be achieved in the United States. Ignoring the choices other countries have made for implementing CPP and rejecting the lessons these choices offer would be myopic.

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[70] *See generally* Strategis Report Country Case Studies.

[71] Sprint Comments at 19. The Commission's current interconnection regime implemented pursuant to Sections 251 and 252 of the Communications Act should not be confused with these CPP arrangements. It is extremely important that ILECs not be permitted to charge their customers more to call a wireless subscriber under the FCC's current interconnection framework.

V. CONCLUSION

The record demonstrates that CPP, if properly implemented, will increase competition between wireless and wireline carriers in local telecommunications markets. To implement CPP properly, however, the Commission must eliminate certain obstacles that threaten its viability. For one, any notification mechanism the Commission adopts must be nationally uniform and simple, one that educates consumers that usage-sensitive charges will apply for CPP calls. The Commission should reject the generalized assertions of consumer groups that CPP implementation requires heavy-handed regulation beyond that the FCC has required of any pay per call service. PCIA has demonstrated in these reply comments that CPP is not a service that lends itself to lengthy per-call preambles and real time rate disclosures.

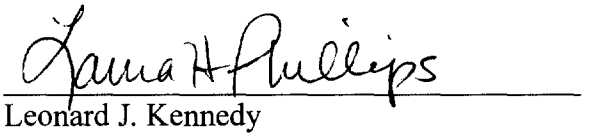
The Commission also must ensure that all CMRS carriers have access to reasonably-priced ILEC billing and collection functions. Because, as the comments illustrate, there are no current alternatives to ILEC billing and collection, particularly at the stage of bill fullfillment, the FCC must ensure that ILECs make their billing and collection services available for CPP at reasonable and nondiscriminatory rates. PCIA demonstrated in these reply comments that such a requirement is consistent with FCC precedent on ILEC billing and collection.

Finally, the Commission should not disregard the international experience other countries have had with CPP. While there are service penetration and pricing differences between the United States and other markets, the comments demonstrate that the international models for CPP are a useful insight into the expected effects of CPP. Simply because the ILECs do not like the international CPP model where the ILEC bills the CPP caller directly, is no reason for the Commission to ignore the CPP experience elsewhere. Based on the foregoing, PCIA

respectfully requests that the Commission act in accordance with these reply comments to ensure that CPP is an option that can be implemented by all CMRS carriers.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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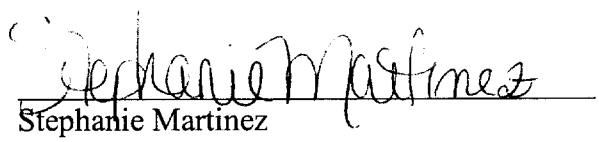

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